IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.MC.No. 3148 of 2006()

CC.152/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES),PUNALUR

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PETITIONER: CR.PETITIONER

PRABHAKARAN PILLAI,
SON OF GOPALA PILLAI, CHAMAKALA VEEDU,
PANAYANCHERI ANCHAL, QUILON.

BY ADV. SRI. V.G. ARUN.

RESPONDENTS: STATE

THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3148 OF 2006

Dated this the 28th day of March, 2007

ORDER

The petitioner is the accused in a prosecution, inter alia, for the offence punishable under Sec.326 of the IPC. There was a case and counter case. It is submitted that the parties were referred to the Lok Adalath for settlement of their disputes. In the counter case, composition was reported and the matter was settled. The proceedings in that case was closed. In this case, as the offence under Sec.326 of the IPC is not compoundable, parties had to go through the entire procedure and P.Ws.1 to 7 have by now been examined. P.W.1 is said to be the only injured witness. P.Ws.2 and 3 are the other occurrence witnesses. All three of them turned hostile to the prosecution evidently in the light of the settlement of disputes between the parties, it is submitted. P.W.4 was examined. That witness supported the case of the prosecution. In the course of cross-examination of P.W.4, it

would appear that the counsel had put certain questions to which objections were raised by her as also by P.W.6 who was later examined. She (P.W.6) is the mother of P.W.4. P.W.4 - the occurrence witness, allegedly supported the case of the prosecution. In between, there was a transfer of the case and transfer back to the same court as the incumbent in office had changed. An objection was raised against the conduct of the incumbent in office as Magistrate when P.W.4 was examined in not preventing unfair questions to P.W.4.

2. Be that as it may, the present controversy arose when the Prosecutor filed an application for recall of P.Ws.1 to 4 and 7. The Prosecutor submitted that on account of his being engaged in another court, P.Ws.1 to 3 could not be cross-examined. His application under Sec.311 of the Cr.P.C. for recall of P.Ws.1 to 3 (I am not referring to the prayer for recall of P.Ws.4 and 7 as the same has already been rejected by the learned Magistrate) was allowed by the learned Magistrate and the Prosecutor was given an opportunity to recall them and cross-examine them. It is against the said order that the petitioner has come before this Court.

3. The learned counsel for the petitioner submits that the

powers under Sec.311 of the Cr.P.C. have been incorrectly, improperly and unfairly exercised by the learned Magistrate. No circumstance exists justifying the invocation of the powers under Sec.311 of the Cr.P.C., it is submitted. In these circumstances, the learned counsel prays that the impugned order may be set aside.

4. I have anxiously considered the contentions raised. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke. That is an extraordinary inherent jurisdiction which is to be invoked only sparingly and in exceptional cases and in aid of justice only. Has justice failed? Has there been miscarriage of justice? Is there abuse of process of the court? These are the crucial questions that should weigh with the court.

5. Obviously, since there is a case and counter case, the Prosecutor in charge in another court was directed to conduct the prosecution in this case. It would appear that there was settlement of the disputes and that is the reason why P.Ws.1 to 3 did not support the prosecution case. Though it is said that the Prosecutor was engaged in another court and that is the reason why P.Ws.1 to 3 were not cross-examined, it is not difficult to

read between the lines and assume that the report of settlement of the counter case and this case in a package must have prompted the Prosecutor not to cross-examine P.Ws.1 to 3. But when P.W.4 supported the case of the prosecution, things appear to have changed obliging the Prosecutor to correct the error committed by him earlier and pray for recall of P.Ws.1 to 3. The conduct of the Prosecutor not cross-examining P.Ws.1 to 3 on the earlier occasion may not be justified. But certainly the prayer for recall of those witnesses to formally declare them hostile and to convey to the court that the prosecution does not want to stand by the version of P.Ws.1 to 3 does appear to me to be justified. At any rate, I am not persuaded to agree that the powers under Sec.482 of the Cr.P.C. can or need be invoked.

6. There is one more reason why I am not persuaded to invoke the powers under Sec.482 of the Cr.P.C. This petition is seen filed as early as on 5/10/06. The challenge is against an interim order passed under Sec.311 of the Cr.P.C. The matter came up for hearing on 9/10/06 and the matter was adjourned. More than 5 months after that this Crl.M.C. is being brought up for hearing now and I am informed that the matter has been pending before the court below all these days because of the

pendency of this Crl.M.C. I am not persuaded, in the facts and circumstances of this case, to invoke the powers under Sec.482 of the Cr.P.C. in favour of the petitioner.

7. This Crl.M.C. is, in these circumstances, dismissed.

(R. BASANT, JUDGE)

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